

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THEIA TECHNOLOGIES, LLC

Plaintiff,

v.

THEIA GROUP, INCORPORATED,

-- and --

THEIA HOLDINGS A, INC.

Defendants.

Case No. 2:20-cv-00097-GEKP

**DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT AND
COUNTERCLAIMS**

Defendants, Theia Group, Incorporated and Theia Holdings A, Inc. (collectively, “Theia Group”) answer the allegations of Plaintiff Theia Technologies, LLC (“Theia Technologies”) set forth in its First Amended Complaint (“FAC”). To the extent the FAC asserts conclusions of law, such conclusions of law require no response in this Answer. To the extent any response is required to headings or other unnumbered paragraphs in the FAC, Theia Group denies the factual allegations, if any, contained in such headings or unnumbered paragraphs.

NATURE OF THE CASE

1. Theia Group admits that Theia Technologies purports to bring an action for trademark infringement, false designation of origin, and unfair competition under the Lanham Act. Except as expressly admitted, Theia Group denies the remaining allegations in Paragraph 1 of the FAC.

JURISDICTION AND VENUE

2. Theia Group admits that the FAC purports to be an action for trademark infringement under the Lanham Act. Theia Group admits that this Court has subject matter over

this case pursuant to 28 U.S.C. §§ 1331 and 1338(a). Except as otherwise stated, Theia Group denies the allegations in Paragraph 2 of the FAC.

3. Theia Group admits that the principal place of business of Theia Group, Incorporated is in Washington, D.C., and that this Court has personal jurisdiction over Theia Group, Incorporated. Theia Group denies that it has committed any wrongful acts. Except as expressly admitted or otherwise stated, Theia Group denies the allegations in Paragraph 3 of the FAC.

4. Theia Group admits that the principal place of business of Theia Holdings A, Inc. is in Washington, D.C. and that this Court has personal jurisdiction over Theia Holdings A, Inc. Theia Group denies that it has committed any wrongful acts. Except as expressly admitted or otherwise stated, Theia Group denies the allegations in Paragraph 4 of the FAC.

5. Theia Group admits that venue is proper in the Eastern District of Pennsylvania. Theia Group denies that it has committed any wrongful acts in this forum, and otherwise denies the allegations in Paragraph 5 of the FAC.

PARTIES

6. Theia Group does not dispute that Theia Technologies is an Oregon company that does business in Oregon.

7. Theia Group admits the allegations in Paragraph 7 of the FAC.

8. Theia Group admits the allegations in Paragraph 8 of the FAC.

9. Theia Group admits that Theia Holdings A, Inc. is a wholly-owned subsidiary of Theia Group, Incorporated.

STATEMENT OF FACTS COMMON TO ALL COUNTS

Theia Technologies' Marks

10. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and on that basis denies the allegations in Paragraph 10 of the FAC.

11. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and on that basis denies the allegations in Paragraph 11 of the FAC.

12. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and on that basis denies the allegations in Paragraph 12 of the FAC.

13. Theia Group does not dispute that Theia Technologies is identified as the registrant for U.S. Trademark Registration Nos. 4,834,657 and 3,473,019 in the U.S. Patent and Trademark Office records. Except as otherwise stated, Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and on that basis denies the allegations in Paragraph 13 of the FAC.

14. Theia Group does not dispute that Theia Technologies is identified as the registrant for U.S. Trademark Registration Nos. 4,524,463 and 3,707,108 in the U.S. Patent and Trademark Office records. Except as otherwise stated, Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and on that basis denies the allegations in Paragraph 14 of the FAC.

15. Theia Group does not dispute that Theia Technologies is identified as the registrant for EUTM Nos. 010012466 and 013314869 in the European Union Intellectual Property Office. Except as otherwise stated, Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and on that basis denies the allegations in Paragraph 15 of the FAC.

16. Theia Group does not dispute that Theia Technologies uses the logo shown in Paragraph 16 of the FAC on its website. Except as otherwise stated, Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and on that basis denies the allegations in Paragraph 16 of the FAC.

17. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and, on that basis, denies the allegations in Paragraph 17 of the FAC.

18. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and, on that basis, denies the allegations in Paragraph 18 of the FAC.

19. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and, on that basis, denies the allegations in Paragraph 19 of the FAC.

20. Theia Group lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, on that basis, denies the allegations in Paragraph 20 of the FAC.

Theia Group and Theia Holdings

21. Theia Group admits that in November 2016, Theia Group applied to the Federal Communications Commission (“FCC”) to launch and operate the 112-satellite Theia Satellite Network (“TSN”).

22. Theia Group admits that it owns the websites <https://theiagroupinc.com/> and <https://theianetwork.com>. Theia Group states that, in compliance with the Court’s Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time. Except as expressly admitted or otherwise stated, Theia Group denies the allegations in Paragraph 22 of the FAC.

23. Theia Group states that, to the extent any of the allegations in Paragraph 23 of the Complaint purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com>, those websites speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court’s Preliminary Injunction Order, which went into effect

when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time.

24. Theia Group states that, to the extent any of the allegations in Paragraph 24 of the FAC purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com>, those websites speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court's Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time.

25. Theia Group states that, to the extent any of the allegations in Paragraph 25 of the FAC purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com>, those websites speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court's Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time.

26. Theia Group states that, to the extent any of the allegations in Paragraph 26 of the FAC purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com>, those websites speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court's Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time.

27. Theia Group states that, to the extent any of the allegations in Paragraph 27 of the FAC purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com>, those websites speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court's Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time.

28. Theia Group states that, to the extent any of the allegations in Paragraph 28 of the FAC purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com>, those websites speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court's Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time.

29. Theia Group states that, to the extent any of the allegations in Paragraph 29 of the FAC purport to summarize, interpret, or quote from Theia Group's Technical Narrative, that document speaks for itself and Theia Group denies any characterization that is inconsistent with its content.

30. Theia Group admits the allegations in Paragraph 30 of the Complaint.

31. Theia Group admits that it applied to register THEIA and T Theia & Design with the U.S. Patent and Trademark Office, and that its applications were assigned U.S. Application Serial Nos. 87/954,755 and 87/954,776. Except as expressly admitted, Theia Group denies the allegations in Paragraph 31 of the FAC.

32. Theia Group admits that it owns International Reg. No. 1457362 for the mark THEIA, and that it designated Japan in its application for International Reg. No. 1457362. Except as expressly admitted, Theia Group denies the allegations in Paragraph 32 of the FAC or lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the FAC and, on that basis, denies them.

33. Theia Group states that, to the extent any of the allegations in Paragraph 33 of the FAC purport to summarize, interpret, or quote from any portion of <https://theiagroupinc.com/> or <https://theianetwork.com> or any public filings, those documents speak for themselves and Theia Group denies any characterization that is inconsistent with their content. Theia Group states that, in compliance with the Court's Preliminary Injunction Order, which went into effect when Theia Technologies posted bond on February 17, 2021, these websites are not accessible at this time. To the extent the allegations in Paragraph 33 of the FAC do not purport to state the contents of

any documents, Theia Group denies the allegations in Paragraph 33 of the FAC or lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them.

34. Theia Group states that, to the extent the allegations in Paragraph 34 of the FAC states conclusions of law, no response is required. Except as otherwise stated, Theia Group denies the allegations in Paragraph 34 of the FAC.

35. Theia Group denies the allegations in Paragraph 35 of the FAC or lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them.

36. Theia Group admits that its customers are nations and governments. Except as expressly, Theia Group denies the allegations in Paragraph 36 of the FAC or lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them.

Theia Group's Lack of Bona Fide Intent

37. Theia Group admits that it filed its applications to register its THEIA marks under § 1(b) of the Lanham Act based upon a bona fide intent to use the marks in commerce. Those applications were assigned U.S. Application Serial Nos. 87/954,755 and 87/954,776. Theia Group admits U.S. Application Serial Nos. 87/954,755 and 87/954,776 are the basic applications for its International Registrations for the THEIA marks. Except as expressly admitted, Theia Group denies the allegations in Paragraph 37 of the FAC.

38. Theia Group states that, to the extent the allegations in Paragraph 38 state conclusions of law, no response is required. Except as otherwise stated, Theia Group denies the allegations in Paragraph 38 of the FAC.

39. Theia Group states that, to the extent Paragraph 39 of the FAC references or purports to summarize, interpret, or quote statutes, the statutes speak for themselves. Theia Group states that to the extent the allegations in Paragraph 39 of the FAC state conclusions of law, no response is required.

40. Theia Group states that, to the extent Paragraph 40 of the FAC references or purports to summarize, interpret, or quote statutes, the statutes speak for themselves. Theia Group states that to the extent the allegations in Paragraph 40 of the FAC state conclusions of law, no response is required.

41. Theia Group denies the allegations in Paragraph 41 of the FAC.

42. Theia Group denies the allegations in Paragraph 42 of the FAC.

43. Theia Group denies the allegations in Paragraph 43 of the FAC.

44. Theia Group denies the allegations in Paragraph 44 of the FAC.

45. Theia Group denies the allegations in Paragraph 45 of the FAC.

46. Theia Group states that, to the extent the allegations in Paragraph 46 of the FAC state conclusions of law, no response is required. Except as otherwise stated, Theia Group denies the allegations in Paragraph 46 of the FAC.

47. Theia Group states that, to the extent the allegations in Paragraph 47 of the FAC state conclusions of law, no response is required. Except as otherwise stated, Theia Group denies the allegations in Paragraph 47 of the FAC.

Theia Technologies' Notice of Infringement

48. Theia Group does not dispute that in or around August 2019, Theia Technologies sent Theia Group a letter regarding Theia Technologies' registrations and requesting further information about Theia Group's use of the THEIA mark. Except as otherwise stated, Theia Group denies the allegations in Paragraph 48 of the FAC.

49. Theia Group admits that in or around August 2019, its websites were not publicly available.

50. Theia Group denies the allegations in Paragraph 50 of the FAC.

Defendants' Infringement of Plaintiff's Marks

51. Theia Group denies the allegations in Paragraph 51 of the FAC.

52. Theia Group admits that Theia Group's word mark THEIA is identical to Theia Technologies' word mark THEIA.

- 53. Theia Group denies the allegations in Paragraph 53 of the FAC.
- 54. Theia Group denies the allegations in Paragraph 54 of the FAC.
- 55. Theia Group denies the allegations in Paragraph 55 of the FAC.
- 56. Theia Group denies the allegations in Paragraph 56 of the FAC.
- 57. Theia Group denies the allegations in Paragraph 57 of the FAC.
- 58. Theia Group denies the allegations in Paragraph 58 of the FAC.
- 59. Theia Group denies the allegations in Paragraph 59 of the FAC.

COUNT I
Federal Trademark Infringement, 15 U.S.C. § 1114

60. Theia Group realleges and incorporates by reference each and every preceding paragraph of this Answer as if set forth herein.

61. Theia Group denies the allegations in Paragraph 61 of the FAC or lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the FAC and, on that basis, denies the allegations in Paragraph 61 of the FAC.

62. Theia Group states that, to the extent the allegations in Paragraph 62 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 62 of the FAC.

63. Theia Group states that, to the extent the allegations in Paragraph 63 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 63 of the FAC.

64. Theia Group states that, to the extent the allegations in Paragraph 64 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 64 of the FAC.

65. Theia Group states that, to the extent the allegations in Paragraph 65 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 65 of the FAC.

66. Theia Group admits that Theia Technologies seeks the relief as stated, but denies that Theia Technologies is entitled to any relief in this action. Theia Group states that, to the extent the allegations in Paragraph 66 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 66 of the FAC.

COUNT II

False Designation of Origin and Unfair Competition, 15 U.S.C. § 1125

67. Theia Group realleges and incorporates by reference each and every preceding paragraph of this Answer as if set forth herein.

68. Theia Group states that, to the extent the allegations in Paragraph 68 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 68 of the FAC.

69. Theia Group states that, to the extent the allegations in Paragraph 69 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 69 of the FAC.

70. Theia Group states that, to the extent the allegations in Paragraph 70 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 70 of the FAC.

71. Theia Group states that, to the extent Paragraph 71 of the FAC references or purports to summarize, interpret, or quote statutes, the statutes speak for themselves. Theia Group states that, to the extent the allegations in Paragraph 71 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 71 of the FAC.

72. Theia Group states that, to the extent the allegations in Paragraph 72 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 72 of the FAC.

73. Theia Group states that, to the extent the allegations in Paragraph 73 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 73 of the FAC.

74. Theia Group states that, to the extent the allegations in Paragraph 74 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 74 of the FAC.

75. Theia Group admits that Theia Technologies seeks the relief as stated, but denies that Theia Technologies is entitled to any relief in this action. Theia Group states that, to the extent the allegations in Paragraph 75 of the FAC state conclusions of law, no response is required. Theia Group denies the remaining allegations in Paragraph 75 of the FAC.

PRAYER FOR RELIEF

Theia Group admits that Theia Technologies seeks the relief requested, but denies that Theia Group is entitled to any of the relief Theia Technologies requests in its Prayer for Relief, including subparts (A) through (R).

AFFIRMATIVE DEFENSES

As to affirmative defenses to the FAC, Theia Group does not, by stating the matters set forth in these defenses, allege or admit that it has the burden of proof or persuasion with respect to any of these matters, and does not assume the burden of proof or persuasion on any matters as to which Theia Technologies has the burden of proof or persuasion. The following affirmative defenses are based on Theia Group's knowledge, information, and belief at this time, and Theia Group specifically reserves the right to modify, amend, or supplement any affirmative defense contained in this Answer. Theia Group reserves the right to assert other defenses as information is gathered through discovery and investigation.

FIRST AFFIRMATIVE DEFENSE (Misrepresentation of Material Facts)

The claims of the FAC are barred, in whole or in part, by Theia Technologies' misrepresentation of material facts.

SECOND AFFIRMATIVE DEFENSE
(Lack of Intent)

The claims of the FAC are barred, in whole or in part, because Theia Group lacked any intent to infringe any valid mark owned by Theia Technologies.

THIRD AFFIRMATIVE DEFENSE
(Good Faith)

The claims of the FAC are barred, in whole or in part, by the doctrine of good faith. Theia Group acted reasonably and in good faith at all times relevant to the acts complained of in the FAC.

FOURTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

Theia Technologies has failed to mitigate its damages, if any, and any recovery should be reduced or denied accordingly.

FIFTH AFFIRMATIVE DEFENSE
(Absence of Damage)

The claims of the FAC are barred, in whole or in part, because Theia Technologies has not suffered any loss or damages as a result of the alleged acts or omissions of Theia Group.

SIXTH AFFIRMATIVE DEFENSE
(Lack of Irreparable Harm)

Theia Technologies is not entitled to any injunctive or equitable relief because it will not suffer irreparable harm.

SEVENTH AFFIRMATIVE DEFENSE
(Lack of Extraterritorial Jurisdiction)

Theia Technologies' requested relief regarding Theia Group's trademark rights outside the U.S. is precluded because this Court lacks jurisdiction with respect to those claims.

EIGHTH AFFIRMATIVE DEFENSE
(Lack of Jurisdiction Over Pending U.S. Applications)

Theia Technologies' requested relief that the Court cancel Theia Group's pending U.S. trademark applications is precluded because this Court lacks jurisdiction to cancel pending U.S. trademark applications.

JURY DEMAND

Theia Group hereby demands a trial by jury on all issues upon which trial by jury may be had.

PRAYER FOR RELIEF

WHEREFORE, Theia Group prays for the following relief:

1. That judgment on the FAC, and on each cause of action herein, be entered in favor of Theia Group;
2. That this Court deny Theia Technologies relief of any kind;
3. That the request for injunctive relief be denied;
4. That Theia Group be awarded its costs incurred, including reasonable attorneys' fees; and
5. For such other or further relief as this Court may deem just and proper.

COUNTERCLAIMS

1. Defendants and Counterclaimants Theia Holdings A, Inc. and Theia Group, Inc. (“Theia Group”) for their Counterclaims against Plaintiff and Counterdefendant Theia Technologies LLC (“Theia Technologies”) allege as follows:

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this this Counterclaim pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, 15 U.S.C. §§ 1119 and 1121, and 28 U.S.C. § 1367(a) because Counterclaimant’s claims are so related to Counterdefendant’s claims that they form part of the same case or controversy under Article III of the United States Constitution.

3. Theia Technologies is subject to personal jurisdiction in this District because it filed its Complaint in this District.

4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (b)(2) in that a substantial part of the events giving rise to the claims occurred in this District and Theia Technologies is subject to personal jurisdiction in this District.

PARTIES

5. Counterclaimant Theia Group, Inc. is a Delaware corporation with its principal place of business in Washington, D.C.

6. Counterclaimant Theia Holdings A, Inc. is a Delaware corporation with its principal place of business in Washington, D.C.

7. On information and belief, Counterdefendant Theia Technologies LLC is an Oregon limited liability company with its principal place of business at 29765 SW Town Center Loop W., Ste. 4, Wilsonville, OR 97070.

GENERAL ALLEGATIONS

Defendant and Counterclaimant Theia Group

A. Theia Group's Planned Data Analytics Services

8. Theia Group was founded in 2015 with the purpose of building a digital model of the Earth so that Theia Group could provide modern digital tools and processing methods to solve world problems.

9. Theia Group's digital model of the earth will be created by the Theia Satellite Network ("TSN"), which is a central aspect of Theia Group's business plan. Theia Group's planned satellite network will be comprised of 112 satellites, each weighing over 10,000 pounds.

10. The TSN will orbit outside of the Earth's atmosphere and its anticipated cost is billions of dollars. Theia Group will collect the data that it analyzes from its network of satellites that it will own and use to collect, process, and communicate information.

11. The U.S. Federal Communications Commission ("FCC") requires that Theia Group launch 50% of its satellite network by May 9, 2025.

12. At its core, Theia Group plans to offer data analytics and information services. Its business model will not include providing the data that it collects to others, but instead selling its analysis of that data. Theia Group cannot and will not sell any goods, including software. Theia Group is not a satellite company, and will not market or sell satellites.

B. Theia Group's Customers and Pricing

13. Theia Group plans to offer its data analytics services to sovereign nations. Negotiations with sovereign nations that are potential customers are coordinated through the nations' intelligence communities. Theia Group currently works only with sovereign nations that receive prior approval from the U.S. government to enter into discussions with Theia Group. The cost for Theia Group's sovereign nation customers to partner with Theia Group for its data analytics services is billions of dollars. Accordingly, even qualified customers cannot impulsively purchase Theia Group's services.

14. After Theia Group launches its satellite network, it may provide its data analytics services to industrial customers in the fields of agriculture, infrastructure, nation state security, insurance property registration, border and national security, and military intelligence. Theia Group does not plan to work on the industrial customer and commercial aspects of its business until *after* it launches its satellite network by 2025.

15. Theia Group has no near-term plans to provide goods or services to individual customers.

C. Theia Group's Marketing Channels

16. Theia Group does not publicly advertise or market its data analytics services. Rather, from its inception, it has sought to keep its name and mission as confidential as possible. It participated in a two-year survey and study conducted by the U.S. government, believing its name would stay confidential. When Theia Group received a public award, it realized its confidentiality had not been maintained, and only then did it put up its website.

17. Theia Group uses its website only to provide general background information about the company. It is not possible to purchase any products or services from Theia Group's website. Instead, qualified and interested parties are instructed to obtain additional information by contacting Theia Group directly.

18. Theia Group has otherwise held a relatively small number of meetings with partners or investors, all on a highly confidential basis.

D. Theia Group's Marks

19. Theia Group filed intent-to-use applications to register its THEIA mark and its T Theia & Design mark. These applications were assigned U.S. Application Serial No. 87/954,755 and U.S. Application Serial No. 87/954,776, respectively.

20. Theia Group filed U.S. Application Serial No. 87/954,755 on June 8, 2018 for "Satellite hardware, namely, computer hardware, satellite receivers, satellite dishes, satellite transceivers, electronic data sensors, remote sensors for use in measuring and monitoring activity taking place on, above and below the earth's surface, and associated software for controlling the

aforementioned hardware for collecting, processing, analyzing and reporting data, and backhauling data from another orbiting constellation of satellites, which replaces some or all of the need for the constellation satellites to downlink directly to earth on their own; modules, namely, computer memory, and integrated circuit modules for backhauling data from another orbiting constellation of satellites, where the aforementioned replaces some or all of the need for the constellation satellites to downlink directly to earth on their own” in Class 9, and for “Remote electronic monitoring via operation and use of satellite equipment using computers and sensors for the analysis of data via visible and non-visible electromagnetic wavelengths, such that materially all of the available wavelengths and/or spectrum necessary to perform subsequent analytics tasks are obtained at once, and/or at a rate faster than the underlying activity rate of the industry, activity or process being observed; spectral analysis of data via visible and non-visible electromagnetic wavelengths and data analysis for commercial, agricultural, geologic, energy and industrial fields, and for monitoring and identifying and differentiating activity, objects and/or living beings, taking place on, above and/or below the earth's surface, especially where the quality of the analytics are sufficient to replace human decision making” in Class 42.

21. Theia Group filed U.S. Application Serial No. 87/954,776 on June 8, 2018 for “Satellite hardware, namely, computer hardware, satellite receivers, satellite dishes, satellite transceivers, electronic data sensors, remote sensors for use in measuring and monitoring activity taking place on, above and below the earth's surface, and associated software for controlling the aforementioned hardware for collecting, processing, analyzing and reporting data, and backhauling data from another orbiting constellation of satellites, which replaces some or all of the need for the constellation satellites to downlink directly to earth on their own; modules, namely, computer memory, and integrated circuit modules for backhauling data from another orbiting constellation of satellites, where the aforementioned replaces some or all of the need for the constellation satellites to downlink directly to earth on their own” in Class 9, and for “Remote electronic monitoring via operation and use of satellite equipment using computers and sensors for the analysis of data via visible and non-visible electromagnetic wavelengths, such

that materially all of the available wavelengths and/or spectrum necessary to perform subsequent analytics tasks are obtained at once, and/or at a rate faster than the underlying activity rate of the industry, activity or process being observed; spectral analysis of data via visible and non-visible electromagnetic wavelengths and data analysis for commercial, agricultural, geologic, energy and industrial fields, and for monitoring and identifying and differentiating activity, objects and/or living beings, taking place on, above and/or below the earth's surface, especially where the quality of the analytics are sufficient to replace human decision making” in Class 42.

22. Theia Group’s T-THEIA Logo (U.S. Application Serial No. 87/954,755) consists of a T shown over an image of a blue Earth followed by THEIA in tall and thin capital letters in gradating shades of dark blue to black, consistent with Theia Group’s plan to rely on a system of satellites collecting data from space while orbiting Earth.



Plaintiff and Counterdefendant Theia Technologies

A. Theia Technologies’ Goods

23. Counterdefendant, Theia Technologies, sells lenses that are intended to be used as components of larger systems. On information and belief, when customers purchase lenses from Theia Technologies, they receive access to two non-downloadable software applications: (1) software for control of the lens, and (2) software to calibrate the lens’s resolution. On information and belief, Plaintiff does not offer imaging services and does not capture any images for consumers.

B. Theia Technologies’ Customers and Pricing

24. On information and belief, Theia Technologies’ customers are lens purchasers. On information and belief, its customers assemble surveillance systems using its lenses and

components procured from third parties. On information and belief, these surveillance systems are used for specific applications, such as traffic monitoring and machine vision.

25. On information and belief, Theia Technologies' largest market is the security and surveillance market. On information and belief, its second largest market is the traffic monitoring industry, where its customers consist of municipalities. On information and belief, its third largest market is the machine vision and factory automation market, which includes robotics. On information and belief, Theia Technologies sells some lenses for consumer cameras, and also to hobbyists.

26. On information and belief, the typical retail price for Theia Technologies' lenses is between \$300 and \$500, while its specialized lenses can reach into the hundreds of thousands of dollars.

C. Theia Technologies' Marketing Channels

27. On information and belief, Theia Technologies markets its lenses through its website, in-person meetings, trade shows, and digital advertisements, but it only sells its lenses through distributors. Theia Technologies includes a list of those distributors on its website.

D. Theia Technologies' Marks

28. Theia Technologies is identified as the registrant for Trademark Registration No. 4,834,657 for the THEIA mark. That registration issued on October 20, 2015 for "downloadable mobile applications for calculating image resolution and simulating pictures; downloadable software in the nature of a mobile application for use in association with closed circuit TV systems for security and surveillance; lens calculating software for analyzing data to calculate resolution" in Class 9.

29. Theia Technologies is identified as the registrant for Trademark Registration No. 3,473,019 for the THEIA mark. That registration issued July 22, 2008 for "Photographic devices, namely, lenses; optics, namely lenses" in Class 9.

E. Theia Technologies' Abandonment of THEIA for Class 9 Software

30. On information and belief, Theia Technologies no longer offers a mobile application or any downloadable software for calculating image resolution and simulating pictures under the THEIA mark. On information and belief, Theia Technologies has not offered such goods in the past three years, establishing a presumption of abandonment. In addition, on information and belief, Theia Technologies has ceased offering such goods with no intent to resume.

31. Theia Technologies has no mobile application available for download in any app store. Theia Technologies' documents produced in the course of this litigation, in response to document requests seeking evidence of Theia Technologies' continuous use of its THEIA mark, show no use of the mark for mobile applications or downloadable software goods for at least the past three years. On information and belief, Theia Technologies ceased offering a mobile application or downloadable version of its calculating software, and instead offers it only online as non-downloadable software, which is not use of the mark for the goods in Trademark Registration No. 4,834,657.

32. On information and belief, Theia Technologies has ceased all use in the United States of the trademark THEIA for "downloadable mobile applications for calculating image resolution and simulating pictures; downloadable software in the nature of a mobile application for use in association with closed circuit TV systems for security and surveillance; lens calculating software for analyzing data to calculate resolution" in Class 9, without any intent to resume use.

33. Theia Technologies, on information and belief, ceased all use in the United States of the trademark THEIA for "downloadable mobile applications for calculating image resolution and simulating pictures; downloadable software in the nature of a mobile application for use in association with closed circuit TV systems for security and surveillance; lens calculating software for analyzing data to calculate resolution" in Class 9 for at least a three-year period.

34. Theia Group filed a Petition to Cancel Registration No. 4,834,657 on the basis of abandonment before the Trademark Trial and Appeal Board on February 22, 2021.

Procedural History

35. Theia Technologies filed its complaint against Theia Group on January 6, 2020. Theia Technologies also filed a motion for preliminary injunction on January 6, 2020.

36. On January 28, 2021, over a year after Theia Technologies moved for preliminary injunction, the Court issued its Order granting in part Plaintiff's motion for preliminary injunction. On February 10, 2021, the Court issued an order setting forth the scope of the injunction and setting the bond at \$250,000. On February 17, 2021, Theia Technologies posted the bond.

FIRST CLAIM FOR RELIEF **Declaratory Judgment of Non-Infringement**

37. Theia Group repeats and realleges each allegation set forth in paragraphs 1 through 36 above as if fully set forth herein.

38. Theia Technologies has alleged that Theia Group's use of the THEIA mark constitutes trademark infringement and false designation of origin and unfair competition under the Lanham Act.

39. Theia Technologies' allegations of trademark infringement and false designation of origin and unfair competition under the Lanham Act have caused, and will continue to cause, damage to Theia Group.

40. There is an actual case or controversy concerning Theia Group's right to use the THEIA mark such that the Court has jurisdiction over Theia Group's request for declaratory relief consistent with Article III of the United States Constitution, and that actual case or controversy requires a declaration of rights by this Court.

41. Theia Group has not infringed any rights of Counterdefendant or engaged in any false designation of origin or unfair competition in its use of the THEIA mark. Declaratory relief is both appropriate and necessary to establish this fact.

42. Pursuant to 28 U.S.C. § 2201, et seq., Theia Group requests declaratory judgment that it has not infringed any rights of Counterdefendant or engaged in any false designation of origin or unfair competition in the THEIA mark.

43. In the event that it is determined that Theia Group has infringed Theia Technologies' rights in the THEIA mark, or engaged in any false designation of origin or unfair competition, Theia Group has not done so willfully. Declaratory relief is both appropriate and necessary to establish this fact.

44. Pursuant to 28 U.S.C. § 2201, et seq., Theia Group requests declaratory judgment that any infringement, false designation of origin, or unfair competition that may have occurred was not willful.

SECOND CLAIM FOR RELIEF

Cancellation of Registration No. 4,834,657 Due to Abandonment, 15 U.S.C. § 1119

45. Theia Group repeats and realleges each allegation set forth in paragraphs 1 through 44 above as if fully set forth herein.

46. Theia Group seeks by this Counterclaim an order pursuant to 15 U.S.C. § 1119 directing the cancellation of United States Trademark Registration No. 4,834,657.

47. Theia Technologies has alleged in this action that it is the owner of Trademark Registration No. 4,834,657.

48. In light of Theia Technologies' allegations in this action, including Theia Technologies' allegation that Theia Group has infringed Trademark Registration No. 4,834,657, Theia Group believes that it is or will be damaged by the continued registration of Trademark Registration No. 4,834,657.

49. On information and belief, Theia Technologies has ceased all use in the United States of the trademark THEIA for "downloadable mobile applications for calculating image resolution and simulating pictures; downloadable software in the nature of a mobile application for use in association with closed circuit TV systems for security and surveillance; lens

calculating software for analyzing data to calculate resolution” in Class 9 without any intent to resume use.

50. Theia Technologies, on information and belief, ceased all use in the United States of the trademark THEIA for “downloadable mobile applications for calculating image resolution and simulating pictures; downloadable software in the nature of a mobile application for use in association with closed circuit TV systems for security and surveillance; lens calculating software for analyzing data to calculate resolution” in Class 9 for at least the immediately prior three-year period.

51. On information and belief, Theia Technologies has abandoned all rights in the registered THEIA mark under 15 U.S.C. § 1127 because it (a) ceased use of the mark for the registered goods without an intent to resume use, and (b) ceased use of the mark for the registered goods for a period of three years prior to the filing of this Counterclaim.

52. Pursuant to 15 U.S.C. §§ 1064(1) and 1119, Theia Group is entitled to an order for the cancellation of Trademark Registration No. 4,834,657.

THIRD CLAIM FOR RELIEF **Wrongful Enjoinder**

53. Theia Group repeats and realleges each allegation set forth in paragraphs 1 through 52 above as if fully set forth herein.

54. The Court entered Theia Technologies’ preliminary injunction on February 10, 2021. The preliminary injunction prohibits Theia Group from using its THEIA mark in websites, domain names, social media, job postings, advertising, marketing, investor and partner pitch materials, “filings and communications with the United States government and its agencies, including the Federal Communications Commission and the United States Patent and Trademark Office,” print and electronic stationary, and third-party company platforms.

55. Theia Group has filed an appeal to the Third Circuit of the preliminary injunction.

56. Theia Group believes that it will prevail at trial in this action and the injunction will be found to have been wrongfully entered.

57. The injunction was wrongfully entered because Theia Technologies has not shown it is likely to succeed on the merits of its claims and because it did not show it is likely to suffer any irreparable harm.

58. Moreover, the injunction is overbroad. The injunction's inclusion of government-facing communications is unnecessary to protect Theia Technologies from any reputational harm. Theia Group has communicated with the federal government under its name since 2016 without any confusion or hit to Technologies' reputation. Theia Technologies has not offered any evidence that it interfaces with those agencies.

59. Theia Group has been and will be harmed by the wrongful preliminary injunction. The preliminary injunction does more than prevent Theia Group from using its name. Theia Group has been advised that it must amend licenses and agreements that could not possibly affect Theia Technologies in any way, much less cause irreparable harm as the law requires. In addition, Theia Group is aware of at least one investor who has reduced its investment as a result of the preliminary injunction. Any delay in or loss of funding could impact Theia Group's ability to complete construction of its satellite network by the deadlines set forth in its license granted by the FCC. Failure to meet the FCC's deadlines may lead to Theia Group's license being reduced or terminated.

60. The Court set the preliminary injunction bond at \$250,000 despite Theia Group's evidence that its costs and expenses to comply with the injunction will far exceed this amount.

61. Accordingly, Theia Group seeks damages for wrongful enjoinder in an amount to be proven, including both the bond amount and an amount that exceeds the bond amount set by the District Court.

JURY DEMAND

Theia Group hereby demands a trial by jury on all issues upon which trial by jury may be had.

PRAYER FOR RELIEF

WHEREFORE, Theia Group prays for the following relief:

1. That the Court declare, pursuant to 28 U.S.C. § 2201, et seq., that Theia Group has not infringed any rights of Counterdefendant in the THEIA mark, or otherwise engaged in acts constituting false designation of origin or unfair competition;
2. That the Court declare, pursuant to 28 U.S.C. § 2201, et seq., that, if the Court determines that Theia Group has infringed Theia Technologies' rights in the THEIA mark, or otherwise engaged in acts constituting false designation of origin or unfair competition, Theia Group has not done so willfully;
3. The Court order the cancellation of United States Trademark Registration No. 4,834,657 pursuant to 15 U.S.C. § 1119;
4. That the Court award Theia Group damages as a result of the wrongful injunction entered against it;
5. That the Court award Theia Group reasonable attorneys' fees; and
6. That the Court grant such other and further relief as it deems just and proper.

Dated: March 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, M. KELLY TILLERLY, attorney for Defendants Theia Group, Incorporated and Theia Holdings A, Inc. hereby certify that I filed the within

**THEIA GROUP, INCORPORATED AND THEIA
HOLDINGS A, INC.'S ANSWER TO FAC AND
COUNTERCLAIMS**

electronically and it is now available for viewing and downloading from the ECF system for the following:

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